

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

OCT 03 2014

OFFICE OF
MANAGING DIRECTOR

Mr. Walter Rice
R&T Communication System, Inc.
Post Office Box 897
Goose Creek, SC 29445

Licensee/Applicant: **R&T Communication System, Inc.**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 U.S.C. § 159, 47 C.F.R. §§ 1.1157(c)(1), 1.1164, 1.1167)
Fee: Fiscal Year (FY) 2010, FY 2011, FY 2012, and FY 2013 Regulatory Fee Late Fees
Station: N/A
Date Request Filed: Apr. 16, and 29, 2014
Fee Control No.: RROG-13-00015591

Dear Mr. Rice:

This responds to Licensee's *Request*¹ for waiver and refund of the penalties for late payment of the Fiscal Year (FY) 2010, FY 2011, FY 2012, and FY 2013 regulatory fees. As we discuss below, because Licensee failed to establish the existence of bank error or to present legal grounds or clear mitigating circumstances to waive collection of the penalty, or a legal ground for a refund, we deny the *Request*.

On April 29, 2014, Licensee submitted an email acknowledging that it "only owed \$27 from the past invoice but had to pay almost \$90 after fees and penalties were added. ... [Licensee is] requesting a return of the ... fees and penalties added to [its] most recent invoice as a result of following directions on the [FCC Form] 499-A exactly."² Licensee failed to include any proof that the fees or penalties were not due or any legal ground for relief.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,³ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴

¹ Emails from Walter Rice, R&T Communication System, Inc. (wjrpayphoneman@comcast.net) to ARINQUIRIES (arinquiries@fcc.gov) (Apr. 16 & 29, 2014) (*Request*). Licensee's submission by email does not comply with the Commission's rules (47 C.F.R. §§ 1.1166(a)(2) and 1.1167(a)).

² *Id.* Licensee seems to have confused payments of contributions due to the Universal Service Fund, which are invoiced by the Universal Service Administrative Company, with payment of the statutorily required annual regulatory fee payable to the Commission, which are not invoiced.

³ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁴ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

Specifically, “[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”⁵

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2012, the deadline for paying regulatory fees was September 13, 2012,⁶ and for FY 2013, the deadline for paying regulatory fees was September 20, 2013.⁷ The Commission did not receive Licensee’s regulatory fee payments for FY 2012 and FY 2013 until September 27, 2013, and February 25, 2014, respectively. After making payment, Licensee asked for a waiver and refund of the statutory penalties and charges.

Licensee requests that we waive and refund the late payment charges on the grounds that “Late payment was due to [Licensee] NOT receiving an invoice until [Licensee was] contacted by [the FCC] six months after the due date.”⁸

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee’s *Request* does not. We also considered whether Licensee’s *Request* presents other grounds for a successful challenge to the penalties. It does not.

First, the Commission does not send reminder notices by mail or email, so the absence of such notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.⁹ Repeatedly, the Commission has held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”¹⁰ Moreover, Licensee is responsible for updating the FCC’s Commission Registration System (CORES) with any changes or updates in the contact representative’s name, address, phone number and the filer’s tax payer identification information.¹¹

⁵ 47 C.F.R. § 1.1164.

⁶ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁷ See FY 2013 Regulatory Fees Due No Later Than September 20, 2013, 11:59 pm Eastern Time (ET), *Public Notice*, DA 13-1796. (Sept. 4, 2013).

⁸ *Request*.

⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009); Fee Filer Mandatory for FY 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

¹⁰ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹¹ See 47 C.F.R. § 1.8002(b)(2).

Licensee's assertions do not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

Moreover, to the extent Licensee's *Request* asserts a challenge under our rule at 47 C.F.R. § 1.1167 to the determination of delinquency, it was not properly filed with the Commission's Secretary and it failed to include "suitable proof" that the fee had been paid or waived. In this case, Licensee only asserts compliance with the instructions on the FCC Form 499, and that the Commission should "send an invoice to the address provided [on the FCC Form 499-A]." ¹² The problems with those contentions are (a) the Commission does not send regulatory fee invoices, and (b) Licensee failed to provide suitable proof that the fees or penalties were not due or that there is a legal ground for a refund.

If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Stephens".

for Mark Stephens
Chief Financial Officer

¹² *Request.*